

STEPHANIE FORMAN, ESQ.; STATE BAR NO.: 195757
ROGER W. BACKLAR, ESQ.; STATE BAR NO.: 225277

THARPE & HOWELL, LLP
15250 Ventura Blvd., Ninth Floor
Sherman Oaks, California 91403
(818) 205-9955; (818) 205-9944 fax
E-Mail: sforman@tharpe-howell.com
E-Mail: rbacklar@tharpe-howell.com

Attorneys for Defendant,
LOWE'S HOME CENTERS, LLC

UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA – EASTERN DIVISION

ERNIE GARABITO,
Plaintiff

V.

LOWE'S COMPANIES, INC. DBA
LOWE'S; LOWE'S HOME
CENTERS, LLC, LOWE'S HOME
IMPROVEMENT; JON KENNARO,
DOES 1 TO 100.

Defendants.

Case No.: 5:23-cv-01372-DMG (SHKx)
[Riverside County Superior Court Case
No.: CVRI2302915]

STIPULATED PROTECTIVE ORDER

Complaint Filed: June 7, 2023

1. A. PURPOSES AND LIMITATIONS

Discovery in this action is likely to involve production of confidential, proprietary, or private information for which special protection from public disclosure and from use for any purpose other than prosecuting this litigation may be warranted. Accordingly, the parties hereby stipulate to and petition the Court to enter the following Stipulated Protective Order. The parties acknowledge that this Order does not confer blanket protections on all disclosures or responses to discovery and that the protection it affords from public disclosure and use extends only to the limited information or items that are entitled to confidential treatment under the applicable

1 legal principles. The parties further acknowledge, as set forth in Section 12.3, below,
2 that this Stipulated Protective Order does not entitle them to file confidential
3 information under seal; Civil Local Rule 79-5 sets forth the procedures that must be
4 followed and the standards that will be applied when a party seeks permission from
5 the court to file material under seal.

6 B. GOOD CAUSE STATEMENT

7 Federal Rules of Civil Procedure, Rule 26(c)(1) states in pertinent part, that the
8 Court, upon a showing of good cause may “issue an order to protect a party from
9 annoyance, embarrassment, oppression, or undue burden or expense.” Fed.R.Civ.P.
10 26(c)(1). In the instant matter, Defendant Lowe’s Home Centers, LLC’s Confidential
11 Documents contain proprietary and confidential trade secret information relating to
12 Defendant Lowe’s Home Centers, LLC’s business practices, its safety protocol, and
13 surveillance videos. Defendant Lowe’s Home Centers, LLC. (“Defendant” or
14 “Lowe’s”) derives independent economic value from maintaining the confidentiality
15 of the policies and procedures set forth in these Confidential Documents.

16 Defendant is a retailer in the home improvement industry and has conducted
17 business in California since 1998. The home improvement retail industry is very
18 competitive. As a result of years of investing time and money in research and
19 investigation, Defendant developed the policies contained in the Confidential
20 Documents for the purposes of maintaining the security of its facilities, providing
21 quality customer service, and ensuring the safety of its employees, customers, and
22 other invitees. These policies and procedures, as memorialized in the Confidential
23 Documents, were created and generated by Lowe’s for Lowe’s, and are used for the
24 purposes of maintaining safety at its stores and creating efficient and organized work
25 environments for its employees. As a result, Defendant is able to minimize the waste
26 of any resources, which is a key factor in generating profitability for its business.

27 Defendant derives economic value from maintaining the secrecy of its Confidential
28 Documents. If disclosed to the public, the trade secret information contained in

1 Defendant's Confidential Documents would reveal Defendant's internal operations
2 and could potentially be used by competitors as a means to compete for its customers,
3 interfere with its business plans and thereby gain unfair business advantages. If
4 Defendant's safety protocol were revealed to the general public, it would hinder
5 Defendant's ability to effectively resolve and minimize liability claims, and its goal of
6 protecting its customers and employees from theft and other crimes. Unrestricted or
7 unprotected disclosure of such information would result in prejudice or harm to
8 Defendant by revealing Lowe's competitive confidential information, which has been
9 developed at the expense of Lowe's and which represents valuable tangible and
10 intangible assets. Accordingly, the parties respectfully submit that there is good cause
11 for the entry of this Protective Order.

12 2. DEFINITIONS

13 2.1 Action: Ernie Garabito v. Lowe's Companies, Inc., et al., Case No.
14 5:23-cv-01372-DMG (SHKx).

15 2.2 Challenging Party: a Party or Non-Party that challenges the designation of
16 information or items under this Order.

17 2.3 "CONFIDENTIAL" Information or Items: information (regardless of how it is
18 generated, stored or maintained) or tangible things that qualify for protection under
19 Federal Rule of Civil Procedure 26(c), and as specified above in the Good Cause
20 Statement.

21 2.4 Counsel: Outside Counsel of Record and House Counsel (as well as their
22 support staff).

23 2.5 Designating Party: a Party or Non-Party that designates information or items
24 that it produces in disclosures or in responses to discovery as "CONFIDENTIAL."

25 2.6 Disclosure or Discovery Material: all items or information, regardless of the
26 medium or manner in which it is generated, stored, or maintained (including, among
27 other things, testimony, transcripts, and tangible things), that are produced or
28 generated in disclosures or responses to discovery in this matter.

1 2.7 Expert: a person with specialized knowledge or experience in a matter pertinent
2 to the litigation who has been retained by a Party or its counsel to serve as an expert
3 witness or as a consultant in this Action.

4 2.8 House Counsel: attorneys who are employees of a party to this Action. House
5 Counsel does not include Outside Counsel of Record or any other outside counsel.

6 2.9 Non-Party: any natural person, partnership, corporation, association, or other
7 legal entity not named as a Party to this action.

8 2.10 Outside Counsel of Record: attorneys who are not employees of a party
9 to this Action but are retained to represent or advise a party to this Action and have
10 appeared in this Action on behalf of that party or are affiliated with a law firm which
11 has appeared on behalf of that party, and includes support staff.

12 2.11 Party: any party to this Action, including all of its officers, directors,
13 employees, consultants, retained experts, and Outside Counsel of Record (and their
14 support staffs).

15 2.12 Producing Party: a Party or Non-Party that produces Disclosure or Discovery
16 Material in this Action.

17 2.13 Professional Vendors: persons or entities that provide litigation support
18 services (e.g., photocopying, videotaping, translating, preparing exhibits or
19 demonstrations, and organizing, storing, or retrieving data in any form or medium) and
20 their employees and subcontractors.

21 2.14 Protected Material: any Disclosure or Discovery Material that is designated
22 as “CONFIDENTIAL.”

23 2.15 Receiving Party: a Party that receives Disclosure or Discovery Material from
24 a Producing Party.

25 3. SCOPE

26 The protections conferred by this Stipulation and Order cover not only Protected
27 Material (as defined above), but also (1) any information copied or extracted from
28 Protected Material; (2) all copies, excerpts, summaries, or compilations of Protected

1 Material; and (3) any testimony, conversations, or presentations by Parties or their
2 Counsel that might reveal Protected Material.

3 Any use of Protected Material at trial shall be governed by the orders of the trial
4 judge. This Order does not govern the use of Protected Material at trial.

5 **4. DURATION**

6 Even after final disposition of this litigation, the confidentiality obligations
7 imposed by this Order shall remain in effect until a Designating Party agrees otherwise
8 in writing or a court order otherwise directs. Final disposition shall be deemed to be
9 the later of (1) dismissal of all claims and defenses in this Action, with or without
10 prejudice; and (2) final judgment herein after the completion and exhaustion of all
11 appeals, rehearings, remands, trials, or reviews of this Action, including the time limits
12 for filing any motions or applications for extension of time pursuant to applicable law.

13 **5. DESIGNATING PROTECTED MATERIAL**

14 **5.1 Exercise of Restraint and Care in Designating Material for Protection.**

15 Each Party or Non-Party that designates information or items for protection under
16 this Order must take care to limit any such designation to specific material that
17 qualifies under the appropriate standards. The Designating Party must designate for
18 protection only those parts of material, documents, items, or oral or written
19 communications that qualify so that other portions of the material, documents, items,
20 or communications for which protection is not warranted are not swept unjustifiably
21 within the ambit of this Order.

22 Mass, indiscriminate, or routinized designations are prohibited. Designations
23 that are shown to be clearly unjustified or that have been made for an improper purpose
24 (e.g., to unnecessarily encumber the case development process or to impose
25 unnecessary expenses and burdens on other parties) may expose the Designating Party
26 to sanctions.

27 If it comes to a Designating Party's attention that information or items that it
28 designated for protection do not qualify for protection, that Designating Party must

1 promptly notify all other Parties that it is withdrawing the inapplicable designation.

2 5.2 Manner and Timing of Designations. Except as otherwise provided in
3 this Order (see, e.g., second paragraph of section 5.2(a) below), or as otherwise
4 stipulated or ordered, Disclosure or Discovery Material that qualifies for protection
5 under this Order must be clearly so designated before the material is disclosed or
6 produced.

7 Designation in conformity with this Order requires:

8 (a) for information in documentary form (e.g., paper or electronic
9 documents, but excluding transcripts of depositions or other pretrial or trial
10 proceedings), that the Producing Party affix at a minimum, the legend
11 “CONFIDENTIAL” (hereinafter “CONFIDENTIAL legend”), to each page that
12 contains protected material. If only a portion or portions of the material on a page
13 qualifies for protection, the Producing Party also must clearly identify the protected
14 portion(s) (e.g., by making appropriate markings in the margins).

15 A Party or Non-Party that makes original documents available for inspection
16 need not designate them for protection until after the inspecting Party has indicated
17 which documents it would like copied and produced. During the inspection and before
18 the designation, all of the material made available for inspection shall be deemed
19 “CONFIDENTIAL.” After the inspecting Party has identified the documents it wants
20 copied and produced, the Producing Party must determine which documents, or
21 portions thereof, qualify for protection under this Order. Then, before producing the
22 specified documents, the Producing Party must affix the “CONFIDENTIAL legend”
23 to each page that contains Protected Material. If only a portion or portions of the
24 material on a page qualifies for protection, the Producing Party also must clearly
25 identify the protected portion(s) (e.g., by making appropriate markings in the margins).

26 (b) for testimony given in depositions that the Designating Party identify
27 the Disclosure or Discovery Material on the record, before the close of the deposition
28 all protected testimony.

7 5.3 Inadvertent Failures to Designate. If timely corrected, an inadvertent
8 failure to designate qualified information or items does not, standing alone, waive the
9 Designating Party's right to secure protection under this Order for such material. Upon
10 timely correction of a designation, the Receiving Party must make reasonable efforts
11 to assure that the material is treated in accordance with the provisions of this Order.

12 6. CHALLENGING CONFIDENTIALITY DESIGNATIONS

13 6.1 Timing of Challenges. Any Party or Non-Party may challenge a designation
14 of confidentiality at any time that is consistent with the Court’s Scheduling Order.

15 6.2 Meet and Confer. The Challenging Party shall initiate the dispute resolution
16 process under Local Rule 37.1 et seq.

17 6.3 The burden of persuasion in any such challenge proceeding shall be on the
18 Designating Party. Frivolous challenges, and those made for an improper purpose
19 (e.g., to harass or impose unnecessary expenses and burdens on other parties) may
20 expose the Challenging Party to sanctions. Unless the Designating Party has waived
21 or withdrawn the confidentiality designation, all parties shall continue to afford the
22 material in question the level of protection to which it is entitled under the Producing
23 Party's designation until the Court rules on the challenge.

24 | 7. ACCESS TO AND USE OF PROTECTED MATERIAL

25 7.1 Basic Principles. A Receiving Party may use Protected Material that is
26 disclosed or produced by another Party or by a Non-Party in connection with this
27 Action only for prosecuting, defending, or attempting to settle this Action. Such
28 Protected Material may be disclosed only to the categories of persons and under the

1 conditions described in this Order. When the Action has been terminated, a Receiving
2 Party must comply with the provisions of section 13 below (FINAL DISPOSITION).

3 Protected Material must be stored and maintained by a Receiving Party at a
4 location and in a secure manner that ensures that access is limited to the persons
5 authorized under this Order.

6 7.2 Disclosure of “CONFIDENTIAL” Information or Items. Unless
7 otherwise ordered by the court or permitted in writing by the Designating Party, a
8 Receiving Party may disclose any information or item designated “CONFIDENTIAL”
9 only to:

10 (a) the Receiving Party’s Outside Counsel of Record in this Action, as
11 well as employees of said Outside Counsel of Record to whom it is reasonably
12 necessary to disclose the information for this Action;

13 (b) the officers, directors, and employees (including House Counsel) of
14 the Receiving Party to whom disclosure is reasonably necessary for this Action;

15 (c) Experts (as defined in this Order) of the Receiving Party to whom
16 disclosure is reasonably necessary for this Action and who have signed the
17 “Acknowledgment and Agreement to Be Bound” (Exhibit A);

18 (d) the court and its personnel;

19 (e) court reporters and their staff;

20 (f) professional jury or trial consultants, mock jurors, and Professional
21 Vendors to whom disclosure is reasonably necessary for this Action and who have
22 signed the “Acknowledgment and Agreement to Be Bound” (Exhibit A);

23 (g) the author or recipient of a document containing the information or a
24 custodian or other person who otherwise possessed or knew the information;

25 (h) during their depositions, witnesses, and attorneys for witnesses, in
26 the Action to whom disclosure is reasonably necessary provided: (1) the deposing
27 party requests that the witness sign the form attached as Exhibit A hereto; and (2) they
28 will not be permitted to keep any confidential information unless they sign the

1 “Acknowledgment and Agreement to Be Bound” (Exhibit A), unless otherwise agreed
2 by the Designating Party or ordered by the court. Pages of transcribed deposition
3 testimony or exhibits to depositions that reveal Protected Material may be separately
4 bound by the court reporter and may not be disclosed to anyone except as permitted
5 under this Stipulated Protective Order; and

6 (i) any mediator or settlement officer, and their supporting personnel,
7 mutually agreed upon by any of the parties engaged in settlement discussions.

8 **PROTECTED MATERIAL SUBPOENAED OR ORDERED PRODUCED**
9 **IN OTHER LITIGATION**

10 If a Party is served with a subpoena or a court order issued in other litigation
11 that compels disclosure of any information or items designated in this Action as
12 “CONFIDENTIAL,” that Party must:

13 (a) promptly notify in writing the Designating Party. Such notification
14 shall include a copy of the subpoena or court order;

15 (b) promptly notify in writing the party who caused the subpoena or order
16 to issue in the other litigation that some or all of the material covered by the subpoena
17 or order is subject to this Protective Order. Such notification shall include a copy of
18 this Stipulated Protective Order; and

19 (c) cooperate with respect to all reasonable procedures sought to be pursued by
20 the Designating Party whose Protected Material may be affected.

21 If the Designating Party timely seeks a protective order, the Party served with
22 the subpoena or court order shall not produce any information designated in this action
23 as “CONFIDENTIAL” before a determination by the court from which the subpoena
24 or order issued, unless the Party has obtained the Designating Party’s permission. The
25 Designating Party shall bear the burden and expense of seeking protection in that court
26 of its confidential material and nothing in these provisions should be construed as
27 authorizing or encouraging a Receiving Party in this Action to disobey a lawful
28 directive from another court.

1 9. A NON-PARTY'S PROTECTED MATERIAL SOUGHT TO BE
2 PRODUCED IN THIS LITIGATION

3 (a) The terms of this Order are applicable to information produced by a Non-
4 Party in this Action and designated as "CONFIDENTIAL." Such information
5 produced by Non-Parties in connection with this litigation is protected by the remedies
6 and relief provided by this Order. Nothing in these provisions should be construed as
7 prohibiting a Non-Party from seeking additional protections.

8 (b) In the event that a Party is required, by a valid discovery request, to produce
9 a Non-Party's confidential information in its possession, and the Party is subject to an
10 agreement with the Non-Party not to produce the Non-Party's confidential
11 information, then the Party shall:

12 (1) promptly notify in writing the Requesting Party and the Non-Party
13 that some or all of the information requested is subject to a confidentiality agreement
14 with a Non-Party;

15 (2) promptly provide the Non-Party with a copy of the Stipulated
16 Protective Order in this Action, the relevant discovery request(s), and a reasonably
17 specific description of the information requested; and

18 (3) make the information requested available for inspection by the
19 Non-Party, if requested.

20 (c) If the Non-Party fails to seek a protective order from this court within 14
21 days of receiving the notice and accompanying information, the Receiving Party may
22 produce the Non-Party's confidential information responsive to the discovery request.
23 If the Non-Party timely seeks a protective order, the Receiving Party shall not produce
24 any information in its possession or control that is subject to the confidentiality
25 agreement with the Non-Party before a determination by the court. Absent a court
26 order to the contrary, the Non-Party shall bear the burden and expense of seeking
27 protection in this court of its Protected Material.

28 10. UNAUTHORIZED DISCLOSURE OF PROTECTED MATERIAL

If a Receiving Party learns that, by inadvertence or otherwise, it has disclosed Protected Material to any person or in any circumstance not authorized under this Stipulated Protective Order, the Receiving Party must immediately (a) notify in writing the Designating Party of the unauthorized disclosures, (b) use its best efforts to retrieve all unauthorized copies of the Protected Material, (c) inform the person or persons to whom unauthorized disclosures were made of all the terms of this Order, and (d) request such person or persons to execute the "Acknowledgment and Agreement to Be Bound" that is attached hereto as Exhibit A.

**11. INADVERTENT PRODUCTION OF PRIVILEGED OR OTHERWISE
PROTECTED MATERIAL**

When a Producing Party gives notice to Receiving Parties that certain inadvertently produced material is subject to a claim of privilege or other protection, the obligations of the Receiving Parties are those set forth in Federal Rule of Civil Procedure 26(b)(5)(B). This provision is not intended to modify whatever procedure may be established in an e-discovery order that provides for production without prior privilege review. Pursuant to Federal Rule of Evidence 502(d) and (e), insofar as the parties reach an agreement on the effect of disclosure of a communication or information covered by the attorney-client privilege or work product protection, the parties may incorporate their agreement in the stipulated protective order submitted to the court.

12. MISCELLANEOUS

12.1 Right to Further Relief. Nothing in this Order abridges the right of any person to seek its modification by the Court in the future.

12.2 Right to Assert Other Objections. By stipulating to the entry of this Protective Order no Party waives any right it otherwise would have to object to disclosing or producing any information or item on any ground not addressed in this Stipulated Protective Order. Similarly, no Party waives any right to object on any ground to use in evidence of any of the material covered by this Protective Order.

1 12.3 Filing Protected Material. A Party that seeks to file under seal any
2 Protected Material must comply with Civil Local Rule 79-5. Protected Material may
3 only be filed under seal pursuant to a court order authorizing the sealing of the specific
4 Protected Material at issue. If a Party's request to file Protected Material under seal is
5 denied by the court, then the Receiving Party may file the information in the public
6 record unless otherwise instructed by the court.

7 13. FINAL DISPOSITION

8 After the final disposition of this Action, as defined in paragraph 4, within 60
9 days of a written request by the Designating Party, each Receiving Party must return
10 all Protected Material to the Producing Party or destroy such material. As used in this
11 subdivision, "all Protected Material" includes all copies, abstracts, compilations,
12 summaries, and any other format reproducing or capturing any of the Protected
13 Material. Whether the Protected Material is returned or destroyed, the Receiving Party
14 must submit a written certification to the Producing Party (and, if not the same person
15 or entity, to the Designating Party) by the 60 day deadline that (1) identifies (by
16 category, where appropriate) all the Protected Material that was returned or destroyed
17 and (2)affirms that the Receiving Party has not retained any copies, abstracts,
18 compilations, summaries or any other format reproducing or capturing any of the
19 Protected Material. Notwithstanding this provision, Counsel are entitled to retain an
20 archival copy of all pleadings, motion papers, trial, deposition, and hearing transcripts,
21 legal memoranda, correspondence, deposition and trial exhibits, expert reports,
22 attorney work product, and consultant and expert work product, even if such materials
23 contain Protected Material. Any such archival copies that contain or constitute
24 Protected Material remain subject to this Protective Order as set forth in Section 4
25 (DURATION).

26 ///

27 ///

28 ///

14. Any violation of this Order may be punished by any and all appropriate measures including, without limitation, contempt proceedings and/or monetary sanctions.

IT IS SO STIPULATED, THROUGH COUNSEL OF RECORD:

**GARY K. WALCH, A LAW
CORPORATION**

Dated: October 19, 2023

By:

**ERIN M. POLISANO
ROBERT S. WALCH
Attorneys for Plaintiff
ERNIE GARABITO**

THARPE & HOWELL, LLP

Dated: October 25, 2023

By: /s/Roger W. Backlar

STEPHANIE FORMAN
ROGER W. BACKLAR
Attorneys for Defendant
LOWE'S HOME CENT

Roger W. Backlar, the filer of this document, attests that all other signatories listed above, and on whose behalf this filing is submitted, concur in the filing's content and have authorized the filing, pursuant to L.R. 5-4.3.4(a)(2)(i).

FOR GOOD CAUSE SHOWN, IT IS SO ORDERED.

DATED: 10/25/2023

Hon. Shashi H. Kewalramani
United States Magistrate Judge

EXHIBIT A

ACKNOWLEDGMENT AND AGREEMENT TO BE BOUND

I, _____, [print or type full name] of _____, [print or type full address] declare under penalty of perjury that I have read in its entirety and understand the Stipulated Protective Order that was issued by the United States District Court for the Central District of California on _____ [date] in the case of Ernie Garabito v. Lowe's Companies, Inc., et al., Case No. 5:23-cv-01372-DMG (SHKx), I agree to comply with and to be bound by all the terms of this Stipulated Protective Order and I understand and acknowledge that failure to so comply could expose me to sanctions and punishment in the nature of contempt. I solemnly promise that I will not disclose in any manner any information or item that is subject to this Stipulated Protective Order to any person or entity except in strict compliance with the provisions of this Order.

I further agree to submit to the jurisdiction of the United States District Court for the Central District of California for the purpose of enforcing the terms of this Stipulated Protective Order, even if such enforcement proceedings occur after termination of this action. I hereby appoint _____ [print or type full name] of _____ [print or type full address and telephone number] as my California agent for service of process in connection with this action or any proceedings related to enforcement of this Stipulated Protective Order.

Date:

City and State where sworn and signed:

Printed Name: _____

Signature:

PROOF OF SERVICE

STATE OF CALIFORNIA, COUNTY OF LOS ANGELES

1. At the time of service, I was at least 18 years of age and **not a party to this legal action.**
 2. My business address is 15250 Ventura Boulevard, Ninth Floor, Sherman Oaks, CA 91403.
 3. I served copies of the following documents (specify the exact title of each document served):

STIPULATED PROTECTIVE ORDER

4. I served the documents listed above in item 3 on the following persons at the addresses listed:

Erin Polisano, Esq.
Lisa Walch, Esq.
Gary K. Walch, A Law Corporation
23801 Calabasas Road
Suite 1019
Calabasas, CA 91302
Telephone No.: (818) 222-3400
Facsimile No.: (818) 222-3405
Email; erin@walchlaw.com;
lisa@walchlaw.com
sg@walchlaw.com

Attorneys for Plaintiff,
ERNIE GARABITO

5. a. **X** **ONLY BY ELECTRONIC TRANSMISSION.** By e-mailing the document(s) to the person(s) at the e-mail address(es) listed in item 4 pursuant to prior written consent of the party(ies) served. Fed.R.Civ.P. 5(b)(2)(E) and (F). I caused the documents to be sent on the date shown below to the e-mail addresses of the persons listed in item 4. No electronic message or other indication that the transmission was unsuccessful was received within a reasonable time after the transmission.

6. I served the documents by the means described in item 5 on *(date)*: *See below*
I declare under penalty of perjury under the laws of the State of California that the
foregoing is true and correct.

10/25/2023 Kelly O'Kelly
DATE (TYPE OR PRINT NAME)

Kelly Miller
(SIGNATURE OF DECLARANT)